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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVIE LEE SHAW,

Defendant and Appellant.

2d Crim. No. B214312
(Super. Ct. No. MA042192-01)
(Los Angeles County)

Stevie Lee Shaw appeals a judgment following conviction of second degree burglary. (Pen. Code, §§ 459, 460.)¹ We affirm.

FACTS AND PROCEDURAL HISTORY

George Whicker lived with his family on Kingtree Avenue in Lancaster. In the garage of the residence, the family stored aluminum cans for recycling. During the early morning of May 14, 2008, neighbors saw Shaw standing on a dumpster looking over the backyard wall of the Whicker property. They telephoned Whicker, who then looked into his backyard. He saw Shaw pulling recycling bins through the backyard gate. Whicker telephoned the police emergency dispatcher and sought assistance. While awaiting the arrival of police officers, Whicker confronted Shaw, who fled on a bicycle. Police officers later found Shaw nearby and arrested him.

¹ All further statutory references are to the Penal Code unless stated otherwise.

The jury convicted Shaw of second degree burglary. (§§ 459, 460.) In a separate proceeding, it found that he suffered a prior serious felony strike conviction and served a prior prison term within the meaning of section 667.5, subdivision (b).

Prior to sentencing, Shaw filed a written motion requesting the trial court to strike the prior serious felony allegation pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 504. In support of his motion, Shaw pointed out that the present offense did not involve violence or threat of violence and that he cooperated during trial proceedings. The court denied the motion because of Shaw's lengthy juvenile and adult criminal record, the nature of the recent prior strike (attempted robbery), and his convictions for crimes of violence.

The trial court then sentenced Shaw to a prison term of five years, consisting of a doubled two-year midterm plus one year for the prior prison term enhancement. (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d), 667.5, subd. (b).) The court also imposed a \$1,000 restitution fine, a \$1,000 parole revocation restitution fine, a \$20 court security fine, and a \$30 courthouse construction fee. (§§ 1202.4, subd. (b), 1202.45, 1465.8, subd. (a)(1); Gov. Code, § 70373.) The court awarded Shaw 402 days of presentence custody credit. The trial judge had ample opportunity to observe the defendant. Following sentencing, the judge stated that Shaw was "feigning" or "putting on his act" of mental illness or not understanding at trial.

Shaw appeals and contends that the trial court abused its discretion by denying his motion to strike the prior serious felony allegation pursuant to *People v. Superior Court (Romero)*, *supra*, 13 Cal.4th 497, 504.

DISCUSSION

Shaw asserts that the circumstances of the offense establish that he did not threaten or use force against Whicker. He adds that he cooperated during trial and points out that the trial court ordered a competency evaluation pursuant to section 1368. Shaw also argues that he successfully served parole for one year prior to committing the present offense. In sum, he contends that a five-year prison term for theft of two recycling bins is

irrational and arbitrary. (*People v. Carmony* (2004) 33 Cal.4th 367, 376 [burden on appellant to establish that sentencing decision is irrational or arbitrary].)

Pursuant to section 1385, subdivision (a), the trial court may strike a prior felony conviction "in furtherance of justice." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) The trial court and the reviewing court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part" (*Ibid.*) At the very least, the reason for dismissing a strike conviction must be that which would motivate a reasonable judge. (*Id.* at p. 159.)

We review rulings regarding motions to strike prior felony convictions pursuant to a deferential abuse of discretion standard. (*People v. Williams, supra*, 17 Cal.4th 148, 162; *People v. Myers* (1999) 69 Cal.App.4th 305, 309.) Appellant bears the burden of establishing that the trial court's decision is unreasonable. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978 [presumption that trial court acts to achieve lawful sentencing objectives]; *Myers*, at pp. 309-310.) We do not substitute our decision for that of the trial court; "It is not enough to show that reasonable people might disagree about whether to strike one or more of [defendant's] prior convictions." (*Myers*, at p. 310.)

The trial court did not abuse its discretion. Shaw suffered a prior felony conviction in April 2005 for attempted robbery, a 2000 felony conviction for possession of a weapon, a 2001 misdemeanor conviction for battery, three violations of probation, and other misdemeanor convictions. Despite incarcerations, grants of probation, and placement on parole, Shaw continues to reoffend.

Throughout his adult life, Shaw has shown a pattern of criminal behavior. (*People v. Gaston* (1999) 74 Cal.App.4th 310, 320 ["unrelenting record of recidivism" compels conclusion that defendant falls within spirit of Three Strikes law].) In view of the nature of Shaw's crimes and his background, character, and prospects, he does not fall

outside the spirit of the Three Strikes law. (*People v. Williams, supra*, 17 Cal.4th 148, 161.)

The judgment is affirmed.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Jared D. Moses, Judge
Superior Court County of Los Angeles

Robert H. Pourvali, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Linda C.
Johnson, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney
General, for Plaintiff and Respondent.